REMARKS

Claims 1-48 are outstanding. By present amendments, claims 1, 39, 42, and 46 have been amended and claims 26, 35, and 45 have been canceled. No claims have been added. Reconsideration and allowance of all the claims are respectfully requested.

Rejection under 35 U.S.C. § 112

Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being anticipated indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1-48, the Office Action states:

> In claim 1: Step a is vague and indefinite. While the step recites forming wet granola dough, there is no recitation of granola ingredients. The term "dry ingredients" include many things which are not granola. Line 6, "said Extruded granola mixture" does not have antecedent basis.
>
> In claim 39, the phrase "encapsulated from the group consisting of "is unclear; it is suggested applicant – with material selected – before "from the group" to make the claim clearer.
>
> Claim 42 has the same problem as claim 39.
>
> Claim 45 is vague and indefinite. Claim 45 recites a filled granola piece made by the process of claim 34; however, claim 34 does not recite filling the granola piece.
>
> Claim 46 is vague and indefinite. Step a recites mixing water with at least one dry ingredient to form a prehydrated cereal grain; however, the step does not recite that the dry ingredient is cereal grain. The term dry ingredient can include many different kinds of material which are not cereal grain. Step c is vague; it is not seen how a dough is formed from one cereal grain. Also, said wet granola dough does not have antecedent basis. Step e, "said extruded granola mixture" does not have antecedent basis.

Claims 1, 39, 42, and 46 have been amended. Claim 45 has been canceled. Examiner has indicated that step c) of claim 46 is vague because it is not seen how a dough is formed from one cereal grain. It is not the role of the claims to teach one skilled in the art to reproduce

the invention, but rather to define the legal metes and bounds of the invention. *In re Rainer*, 305 F.2d 505, 509, 134 U.S.P.Q. 343, 346 (C.C.P.A. 1962). If the metes and bounds of the claimed invention are clearly ascertainable, then the claim cannot be properly rejected as "vague" or "indefinite" under 35 U.S.C. § 112, second paragraph. Further, as proof that a dough can be formed from a single cereal grain, Applicants point to at least one issued patent that discloses a granola-type food product having a single cereal grain. For example, U.S. Pat. No. 6,387,436 discloses a granola-type product comprising dry ingredients including at least one cereal grain. (See col. 2, lines 47-53). It is believed the rejection is overcome.

Applicants believe Examiner rejections to be moot in light of amendments and arguments. Applicants respectfully requests Examiner withdraw rejections.

Rejection under 35 U.S.C. § 102

Claim 26 is rejected under 35 U.S.C. 102 (e) as being anticipated by Linscott.

With respect to claim 26, the Office Action states:

> Linscott discloses a chewy granola bar which comprises dry ingredients, binder syrup and water. (see col. 2 lines 1-40 and columns 5-6).
>
> The Linscott product differs from the claimed product in the way that it is made; however, determination of patentability in "product-by-process claim is based on the product itself, even though such claim is limited and defined by process." (See In re Thorpe 227 USPQ 964).

Claim 35 is rejected under 35 U.S.C. 102 (e) as being anticipated by Sirohi et al.

With respect to claim 35, the Office Action states:

> Sirohi et al disclose a food bar comprising dry ingredients, binder syrup and water. The bar has a water content of from 1-7%. (see col. 4 lines 20-64)
>
> Since the product has the water content within the range claimed, it is inherent the product is a crunchy granola. The Sirohi et al product differs from the claimed product in the way that it is made; however, determination of patentability in "product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (See in re Thorpe 227 USPQ 964)

Claim 45 is rejected under 35 U.S.C. 102 (b) as being anticipated by Bailey.

With respect to claim 45, the Office Action states:

> Bailey discloses a filled granola snack bar. The bar comprises dry ingredients, water, and binding syrup. The bar can comprise filling to make filled bar. (see col. 3 lines 1-3 and example 4)
>
> The Bailey product differs from the claimed product in the way that it is made; however, determination of patentability in "product-by-process claimed is based on the product itself, even though such claim is limited and defined by process. (See In re Thorpe 227 USPQ 964)

Claims 26, 35, and 45 have been canceled. Examiner's rejection is moot in light of cancellation. Applicant respectfully requests Examiner withdraw rejection.

CONCLUSION

In light of the amendments and the arguments made by Applicants above, Applicants submit that all existing claims are now in a condition for allowance. Applicants respectfully request that Examiner withdraw all restrictions and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or Chad Walter at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, L.L.P. Deposit Account 50-0392.

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I hereby certify that this document is being deposited, pursuant to 37 C.F.R. 1.10, with the United States Postal Service via first class mail an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 25, 2005.

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